IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5779 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINAYAK NILKANTH JOGALEKAR

Versus

STATE OF GUJARAT

Appearance:

MR TV SHAH for Petitioners

Mr.S.P. Dave, APP for Respondent No. 1

MR YN RAVANI for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/02/2001

ORAL JUDGEMENT

Leave to amend the Criminal Case number in the prayer clause as well as in the memo of petition so as to

read "Criminal Case no.1352/99" instead of "Criminal Case no.101/99. The petitioners to carryout the amendment forthwith.

Heard learned Advocate Mr. T.V. Shah for the petitioner.

1. Rule. Learned Advocate Mr.Yogesh Ravani waives service of rule on behalf of the respondent no.2 while learned A.P.P. Mr. S.P. Dave waives service on behalf of the respondent no.1.

2. The petitioners have prayed to quash and set aside the order passed by the learned J.M.F.C., Bhavnagar dated 29-7-1999 in the proceedings of Criminal Case no.1352/99 referring the matter to PSI "C" Division Police Station, Bhavnagar under Sec.156(3) of the Code of Criminal Procedure, 1973 ("Code" for short).

3. The respondent no.2 has filed Criminal Case no.1352/99 in the Court of Chief Judicial Magistrate, Bhavnagar against the present petitioners for the offences made punishable under Secs.379, 406, 420, 506(2) read with Sec.114 of the Indian Penal Code("IPC" for short); on the facts that a four wheeler vehicle bearing registration no.GJ-4-T-7820 is owned by the respondent no.2(hereinafter referred to as complainant) and was obtained by the complainant for the purpose of his business from the present petitioners (Manager of M/s. Anagram Finance Pvt.Ltd. & Ors., at Ahmedabad Office and Bhavnagar Office respectively). The complainant has averred and alleged in the complaint that when the vehicle was obtained by the complainant from the present petitioners, the petitioners had obtained some documents of loan and the complainant was neither permitted to read the same nor any copy was supplied to the complainant. That the signature of the complainant was obtained on several documents and blank papers. It is also averred and contended that the present petitioners were supposed to furnish the account of installment of the loan with accrued interest. However, without giving any account despite demand, the petitioners have charged exorbitant interest and by showing huge amount as outstanding dues on the said vehicle have tried to take possession of the same. It is alleged in paragraph 4 of the complaint that on 20-5-1999 at around 3.45 hours, subject vehicle was lying near the office premises of the complainant and the complainant was not present at the office. At that time, the petitioners alongwith some headstrong persons had taken away the said vehicle without the consent and/or knowledge of the complainant, and as such, have committed offence punishable under Sec.379,IPC. It is further

averred and contended that the present petitioners the accused of the said complaint; had given assurance to the complainant that every month account of the loan obtained by the complainant would be given to him and no exorbitant interest or penalty would be charged. However, the accused having committed breach of trust and attempted to take away the vehicle from the possession of the complainant, and thereby have committed offences punishable under Sec.406 and 420, IPC. The complainant has further averred that on enquiry made by the complainant at the office of the present petitioner on 6-6-1999, the complainant was informed that unless the entire outstanding dues are paid; vehicle shall not be returned and complainant was threatened of dire consequences if any complaint is filed. The complainant thereafter served a notice dated 24-6-1999 and filed complaint in the Court of Chief Judicial Magistrate on 27-7-1999.

4. That on 29-7-1999, the learned Chief Judicial Magistrate after hearing the complainant and his Advocate referred the complaint to PSI "C" Division Police Station for investigation under Sec.156(3) of the Code. The petitioners have challenged the said complaint and the order in the present petition.

5. Learned Advocate Mr. T.V. Shah appearing for the petitioner has referred to and relied on the documents annexed with the petition whereby the present respondent no.2 has agreed to the terms and conditions of lease which includes right of the lessor-the petitioner to take possession of the vehicle if the installments are not paid on due date alongwith accrued interest. A demand notice dated 30-6-1999 produced at Annexure "B" is also referred to whereby present respondent no.2 was intimated that if the outstanding dues are not paid before 20th January, 1996 the possession of the subject vehicle would be taken in accordance with the terms and conditions of the lease agreement. Mr. Shah has also referred to a notice dated 6-6-1999 served to the respondent no.2 claiming outstanding dues and intimating the fact that if the said dues with agreed charges are not paid within seven days, the vehicle shall be sold at available market price and sale proceeds shall be adjusted towards the outstanding dues.

6. On the above stated facts, it has been submitted that the respondent no.2 as a lessee had given express consent vide lease agreement to take away the vehicle and if under the right conferred by the agreement, vehicle is taken away by the petitioners no offence under Sec.379 of

the IPC could be said to have been committed and similarly, the ingredients of Sec.406 or 420 being absent in the complaint, the Court could not have referred the matter for investigation under Sec.156(3) of the Code, and as such, the complaint and the order deserve to be quashed and set aside under Sec.482 of the Code.

7. As against that learned Advocate Mr.Y.N. Ravani has referred to paragraph 4 of the complaint, copy of which is produced at Annexure "E" and has urged that so far as recital of the complaint is concerned, the complainant has averred in terms that the disputed vehicle has been taken away without the consent and knowledge of the complainant which constitute an offence under Sec.379, IPC. Shri Ravani has referred to and relied on the observations made by this Court in the matter of KANAKSINH HATHISINH JADEGA AND ORS VS. BIRBHADRASINH NARENDRASINH JHALA AND ANOTHER, reported vide 1988(1) G.L.H 15 at paragraph 9 and has urged that generally the Court would not invoke the inherent powers under Sec.482 of the Code particularly where investigation is likely to be interfered unless it is an exceptional case where non interference would result in miscarriage of justice. On the said observation, it is urged on behalf of the respondent that as the matter is referred to for investigation under Sec.156(3) of the Code, this Court should not interfere at this stage and let the Investigating Officer collect the material fact in respect to the impugned complaint. Shri Ravani has further referred to and relied on the observations made by this Court in the matter of BANK OF BARODA VS. RABARI BACHUBHAI HIRABHAI AND ORS., reported vide AIR 1987 GUJARAT 1 and has contended that hypothecation of a vehicle only creates a right of security on the vehicle and neither the ownership nor the possession pass to the party. That, in substance, the agreement entered into between the petitioners and the respondent no.2 is an agreement of hypothecation, and therefore, ownership has not passed in favour of the petitioner. Under such circumstances, the respondent no.1 is entitled to file a complaint if the vehicle is taken away without the consent or knowledge of the respondent no.2.

8. Though the submissions urged on behalf of the respondent no.2 look attractive and are made with utmost vehemence, it would be difficult to hold that it would merit acceptance.

It would be pertinent to note that the respondent no.2 as a complainant has made a false statement in the complaint that he is the sole owner of the subject

vehicle, however, in order to avoid any criminal liability for the said statement, in the same paragraph, it has been averred that the accused (petitioners)) have obtained certain documents without permitting the complainant to read the same or supplying the copies. That the signatures of the complainant have been obtained on several documents including blank papers. It is interesting to note that immediately in the next paragraph, the complainant has stated that the Finance Company had failed to give account despite the demand though agreed in the agreement and has charged exorbitant and excessive amount towards the interest as outstanding dues on the subject vehicle. The said contradictory version made by the complainant in the complaint itself suggests that complainant had entered into an agreement with the Finance Company-the petitioners and having earned the advantage under the agreement, the complainant is estopped from contending contrary to the terms of the said agreement. The copy of the agreement produced on record on behalf of the petitioners and referred to hereinabove clearly confer rights on the petitioner Finance Company of ownership of the said vehicle so long as the entire outstanding dues availed by the respondent no.2 as a lessee have not been paid to the Finance Company. Thus, the prima facie reading of the complaint, itself suggests that the vehicle was taken under the right arising from the agreement of lease, and thereby, there could not be a fact situation of committing an offence under Section 379 of the Code. Similar is the case with the ingredients regarding Secs.406, 420, IPC as averred in the complaint. The question is under such circumstances, whether the Court should interfere in the investigation ordered to by the Chief Judicial Magistrate by invoking the powers under Sec.482 of the Code or not?. That the observations referred to at paragraph 9 in the case of KANAKSINH (Supra) and also in the matter of EASTERN SPINNING MILLS SHRI VIRENDRA KUMAR SHARDA AND ANR. reported vide AIR 1985 SC 1668 suggest that in exceptional cases where non interference would result in miscarriage of justice, the Court and/or the judicial process should not interfere; at any stage of investigation of the offence. Similar observations are also made by the Supreme Court in the matter of STATE OF BIHAR VS. JAC SALDANNA reported vide AIR 1980 SC 326. That the High Court has made the observation in paragraph 9 of the matter of KANAKSINH JADEGA (supra) considering the above stated observations of the Supreme Court.

That in the instant case, the respondent no.2 has availed the benefit of lease agreement by taking the vehicle and has entered into a covenant giving express

consent to take away the vehicle on non payment of dues; and yet has made a complaint that vehicle of his sole ownership is taken away by the respondent no.2 without his consent or knowledge. Such a complaint based on a false statement could not be permitted to be investigated by the police as it would amount to causing miscarriage of justice to the petitioners. That the trial Court ought to have perused the complaint so as to ascertain the right of the accused vis-a-vis the complainant in respect to disputed vehicle on a true construction of the same and should not have sent the matter for investigation under Sec.156(3) of the Code.

9. As regards the second submission to the effect that; the document in substance is a document of hypothecation and merely creates security in favour of petitioner, and thereby, the complaint is justified. Such a submission could also be not accepted as in the instant case, it is the agreement of lease wherein the ownership of the vehicle of the Finance Company is accepted by the respondent no.2 and under express condition possession of vehicle is taken by the complainant as lessee and not as an owner. Under such circumstances, the observations made by the Supreme Court in BANK OF BARODA'S case (Supra), have no application. In overall consideration of the facts and circumstances as apparent from the record, this is a fit case where interference of this Court is required so as to prevent miscarriage of justice by abuse of power.

10. On the basis of the foregoing discussion, the petition is allowed. The impugned complaint being Criminal Case no.1352/199 pending in the Court of Chief Judicial Magistrate, Bhavnagar which is referred to PSI "C" Division Police Station for investigation under Sec.156(3) vide order dated 29-7-1999 alongwith the said order are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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